

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

2006 SEP 21 P 4: 36

**CHARLES KELSER, d/b/a  
RIVER REGION EVENTS  
Plaintiff,**

**v.**

**ALCAZAR SHRINERS,  
SHRINERS OF NORTH AMERICA,  
and LEE SIMS,  
Defendants.**

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DEBRA P. HACKETT, CLK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

**Civil Case No. 2:06-cv-818-CSC**

**MOTION FOR TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

COMES NOW Plaintiff, by and through his attorney of record, and would show unto the Court as follows:

1. Plaintiff is the lessee of certain premises at 555 Eastern Boulevard, Montgomery, Alabama. (Exhibit 1).
2. The lease is to facilitate Plaintiff's hosting public certain events at the demised premises.
3. Plaintiff holds a Class I Lounge liquor license issued by the Alabama Alcoholic Beverage Control Board ("ABC Board") for the said premises. (Exhibit 2).
4. A dispute has arisen between the owners of the said premises – the defendants herein – and Plaintiff, by which Plaintiff is being prohibited from performing under the lease or even being on the premises. That dispute is at the heart of the underlying lawsuit in this case.
5. The defendants have now announced that they will be hosting a "Tropical Luau" within the premises on Saturday, September 23, 2006, to which participants are invited to

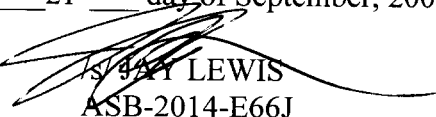
“BYOB,” understood to be vernacular for “brown bagging” or bringing one’s own bottle. (Exhibit 3).

6. The practice of “brown bagging” is prohibited by the regulations of the ABC Board, specifically § 20-X-6-.01(12), which provides that “No ABC Board licensee shall allow on the licensed premises the consumption and/or possession of any type of alcoholic beverage which the licensee is not authorized to sell. Further, the practice of brown bagging or customers bringing on the licensed premises their own alcoholic beverages is prohibited on ABC Board licensed premises.” (Exhibit 4).
7. If the defendants are allowed to proceed with their “Tropical Luau” Plaintiff will be damaged in several ways. (1) he will lose revenue that he would have made by supplying and selling the liquor that attendees will consume; (2) he will be unable to monitor the event to satisfy his legal obligation to ensure that all beverages consumed are of the type he is authorized to sell; (3) he will be violating the regulation against brown bagging, thus endangering the validity of his license.
8. Plaintiff is in immediate danger of suffering the harms and damages set forth above, as the event complained of is set to take place in two days’ time. Plaintiff could not act earlier as he did not learn of the event until the day before the filing of this motion.
9. Plaintiff is in danger of suffering irreparable damage as he could be seen as having committed a *per se* violation of the law by not prohibiting “brown bagging.” If Plaintiff loses his liquor license because of this event, he will either be prohibited from, or have great difficulty in, receiving another one. This will irreparably damage Plaintiff’s business.

10. Plaintiff has no adequate remedy at law. While the contract issue underlying the current lawsuit can be determined at law, the acts of the defendants in putting his license in jeopardy cannot be. Once that happens, it happens.
11. Plaintiff's counsel has conferred with the only person who has ever been identified as legal counsel for the defendants, Mr. Joseph Edward Parish, Esq. Mr. Parish has advised counsel that he will not be representing the defendants further in this matter and has advised counsel to serve the defendants directly with this motion. Counsel has done so. Because of the time constraints present in this matter, however, no direct conversation has taken place with the defendants.

WHEREFORE, the premises considered, Plaintiff prays that the Court will issue a Temporary Restraining Order prohibiting the defendants from violating the law by holding their "Tropical Luau" under the terms and conditions advertised or, in the alternative, will Order that the defendants not permit attendees to illegally "brown bag" or bring personal liquor onto the subject premises or, in the alternative will Order that the defendants permit Plaintiff to set up a bar and to lawfully sell liquor at the event under the terms of his lease and his license. Plaintiff further requests that the Court set a bond in a sufficient amount pursuant to the requirements of Rule 65, F.R.Civ.P. Plaintiff asserts that should the Court Order that Plaintiff be permitted to set up a bar and to sell liquor at the event, the defendants would not be damaged by any wrongful issuance of the Order, and that the bond should only be sufficient to cover costs, if any.

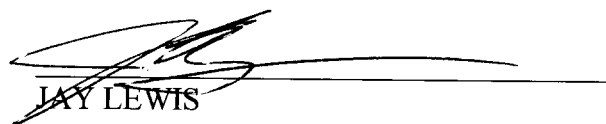
RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of September, 2006.

  
/s/ JAY LEWIS  
ASB-2014-E66J  
J-Lewis@JayLewisLaw.com

Attorney for Charles Kelser  
Law Offices of Jay Lewis, LLC  
P.O. Box 5059  
Montgomery, Alabama, 36103  
334-263-7733 (voice)  
334-263-7733 (fax)

**CERTIFICATION OF COUNSEL**

I hereby certify that on September 21, 2006, I have personally taken the steps set forth above to give notice of this motion to the defendants in this case, and that the dangers and harms set forth above will accrue prior to any opportunity by which the opposing parties or their counsel may be heard in opposition. The Order should issue without delay without hearing because of the immediate danger of irreparable harm to Plaintiff for which he has no remedy at law.



JAY LEWIS  
ASB-2014-E66J  
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Attorney for Charles Kelser  
Law Offices of Jay Lewis, LLC  
P.O. Box 5059  
Montgomery, Alabama, 36103  
334-263-7733 (voice)  
334-263-7733 (fax)

**CERTIFICATE OF SERVICE**


I hereby certify that on the 21<sup>st</sup> day of September, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system AND that I sent a copy of the same to the following natural persons or entities by hand delivery:

Lee R. Sims  
555 Eastern Blvd.  
Montgomery, AL

Alcazar Shriners  
555 Eastern Blvd.  
Montgomery, AL

And that I served the same on the following entity by placing a copy in the United States Mail, first class postage prepaid and properly addressed:

Shriners of North America  
Shriners International  
2900 Rocky Point Drive  
Tampa, FL 33607



/s/ JAY LEWIS  
Law Offices of Jay Lewis, L.L.C.  
P.O. Box 5059  
Montgomery, Alabama 36103  
(334) 263-7733 (Voice)  
(334) 832-4390 (Fax)  
[J-Lewis@JayLewisLaw.com](mailto:J-Lewis@JayLewisLaw.com)  
ASB-2014-E66J  
Attorney for Defendant

## LEASE AGREEMENT

This agreement is made this 1st day of June, 2006 between Alcazar Shriners, hereafter known as Lessor, and Charles P. Kelser/dba River Region Events, hereafter known as Lessee.

Lessor agrees to lease property known as: 555 Eastern Blvd., Montgomery, AL. 36117, to Lessee for a period of nineteen (19) months, ending January 1, 2008, with option to renew. Lessee agrees to lease the property for the following purposes:

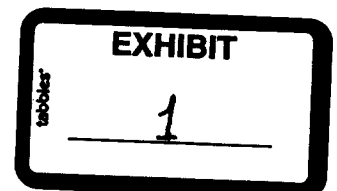
1. Events sponsored by Lessee at a cost agreed upon by both parties.
2. Events sponsored by Lessor requiring alcohol sales. Lessee agrees to pay Lessor 10% of net profit of liquor sales for these events.

Lessor

*Robert L. Warten*  
*Alcazar Shrine Center*  
*Rental chairman*

Lessee

*Charles P. Kelser*



STATE OF ALABAMA

ALCOHOLIC BEVERAGE  
CONTROL BOARD

MONTGOMERY, ALABAMA

LOCATION: 555 EASTERN BLVD, MONTGOMERY  
CHARLES P. HOLLANDER

RIVER REGION EVENTS

PO BOX 240721

MONTGOMERY AL 36124

CHANGE  
DATE 11/10/06  
PAGE 1

SEE EXPIRATION  
DATE BELOW

MONTGOMERY

TYPE OF LICENSE	LICENSE NUMBER	HOMOCO	DRAFT BEER	EXEM- TION	ISSUE DATE	STATE FEE	COUNTY FEE	PENALTY FEE	RVP FEE	TOTAL FEE
D10	315551	NO	YES		07/24/06	300.00	200.00			500.00
					EXPIRATION DATE					
					9/30/06					

THESE PRIVILEGES ARE NOT ASSIGNABLE AND ARE VALID FOR USE ONLY BY THE  
LICENSEE NAMED HEREON AT THE LOCATION HEREIN DESIGNATED WITHIN THE HAND  
AND SEAL OF OFFICE OF THE BOARD

2005-2006

THESE PRIVILEGES HAVE BEEN ISSUED TO THE LICENSEE NAMED ABOVE AND ARE VALID FOR USE ONLY BY THE  
LICENSEE NAMED ABOVE AT THE LOCATION HEREIN DESIGNATED WITHIN THE HAND  
AND SEAL OF OFFICE OF THE BOARD

ALABAMA ALCOHOLIC BEVERAGE CONTROL BOARD

CONTROL NUMBER 13321

*Emory Johnson*  
ADMINISTRATOR

EXHIBIT

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tabbles



# ALCAZAR NOBLE NEWS

Alcazar Shrine Center, Montgomery, AL 36117

Volume 2 • No. 9

September 2006

## FROM THE POTENTATE

Your Divan and Nobility just returned from the SESA convention in Jackson, Miss. Everyone had a good time, some had a better time at Vicksburg and some did not have a good time or profitable time at Vicksburg. The hospitality was good and the parade was very nice but it was disappointing that no more people were on the sidelines.

I wish to congratulate our Provost Guard for placing third in their competition. GREAT job guys. I also wish to congratulate Jim Bryant for his appointment as Appointed Secretary for the SESA Provost Guard Association. Our own Bob Schick was the winner in the Ritualistic Competition. As usual, Bob, you did a great job, congratulations.

On September 22 and 23, 2006 the Potentates Ball will be held. Everyone is welcome. This is a Ball for the Temple. It will be in the Luau theme and the dress will be Hawaiian luau, NO SHORTS PLEASE, with fez. We hope everyone will join us in this fun weekend. The invitation and reservation card is in this publication. It is very important that you complete the response card and return it to the Temple as soon as possible to enable us to have a proper count for the food and seating. If your unit wishes to reserve a table please contact the Recorder and give him the number of seats you will need to reserve.

Yours in the Faith,  
*Lee R. Sims*

## FROM THE CHIEF RABBAN

Attention to you sons of the desert from the office of the Chief Rabban. Well the Southeastern has come and gone. We had two units in competition. The Provost Guard won 3rd place. Thanks to Jim Bryant, L.V. Beasley, Billy Gray, Joe Bowen and Ithel Guyton and a special thanks to Virginia Bryant for all the help in getting the guys ready for inspection. Special thanks to Bob Shick, not Remington, for his first place in the ritualistic competition. A thank you to the Dothan Unit - The Alcazar Wiregrass Trail Busters - Sonny Baker, Ray Matheson, Charlie Watson, Wendel Pitts, Tom Harris, W.C. Moon, Clayton Newton and all the ladies with them. A thanks to the Phenix City Club for their participation and for bringing the bus over.

I would hope that I have seen you at the Steak and Date Night Out. The Potentate's Ball is on September 23, so plan to come and have a good time.

As always talk to your friends about becoming a Mason and a Shriner.

Last but not least, a thank you to Danny and Diana for the hospitality room and all the trimmings.

I always look forward to seeing the nobility having a good time.

Yours in the Faith,  
*Byron Stinson*

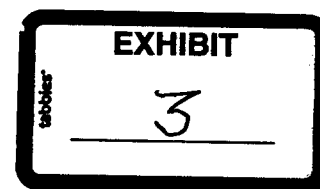
## FROM THE ASSISTANT RABBAN

Members of your Divan have just returned from attending Southeastern in Jackson, MS, where we saw members of Alcazar shine in their respective categories. Congratulations to our Provost Guard, the Nobles were sharp and their efforts resulted in another trophy for their dress and appearance. When you see them make sure you let them know how much they are appreciated. Noble Bob Schick dazzled everyone with his oratory skills and took first place in the ritualistic competition. We had members from the Phenix City Shrine Club in attendance and they provided the much needed transportation for the ladies. The Wiregrass Shrine Club was well represented by members of the Trail Busters who paraded and demonstrated their skills with the go-carts along with Noble Ray Matheson and his "Monster Machine" and a Clown to entertain the kids. Special thanks goes out to the Nomads for providing the escort vehicles for the Divan. What is an event like this without a hospitality room? Noble Danny Lockwood and his lady Diane did a super job making sure that everyone was well taken care of. This was truly a "fun event" and demonstrates how we can all work together towards a common goal. The pride in Alcazar was reflected in every event and I was proud to represent the Nobility as a member of your Divan.

On a personal note, I would like to thank everyone who provided assistance to my Lady, Jackie. This was her first chance to get out and attend a function like this and the support and assistance provided her by the Nobility and Ladies was overwhelming. Your actions clearly reflect the caring and family atmosphere that exists in Alcazar and is very much appreciated.

Nobles, the above clearly indicates that the desire to see Alcazar excel exists within our Temple. The actions of our Nobility reflect credit and pride upon Alcazar and we must now take the initiative to see that this desire continues in all our daily activities.

Yours in The Faith  
*Jim Randolph*







*Please respond  
as soon as possible*

\_\_\_\_ *We can't wait to get to the sandy beaches and enjoy the luau.*

\_\_\_\_ *We will have to stay off the beach and will not be able to attend the luau.*

M \_\_\_\_\_

Shrine Center \_\_\_\_\_

## EVENT SCHEDULE

Friday, September 22

**6pm - 8pm — Hospitality**  
*at Homewood Suites*

Saturday, September 23

**11am - 1pm — Hospitality and Presentation**  
*at Homewood Suites*

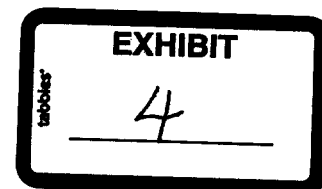
**5:30pm - 11pm — Potentate Ball**  
*at Alcazar Shrine Temple*

*Hotel reservations must be made  
as soon as possible.*

Homewood Suites  
1800 Interstate Park Dr.  
Montgomery, Alabama  
**334-272-3010**

**ALABCRegs****20-X-6-.01. LICENSED PREMISES.**

- (1) Any ABC Board licensee and/or any person applying initially for an ABC Board license, by virtue of holding such license or making such application does agree, invite, consent, and authorize agents of the ABC Board, as well as other commissioned law enforcement officers having proper jurisdiction, at any time, to enter and search the premises, observe the operation, and otherwise enforce state laws, and rules and regulations of the ABC Board in or about said premises, without a warrant, including not only the licensed premises but any building owned or occupied by the licensee in connection therewith, adjoining, or adjacent thereto, whether or not connected or used by the licensee as a private dwelling.
- (2) Any ABC Board licensee and/or any person applying initially for an ABC Board license, by virtue of holding such a license or making such application, does agree, invite, consent and authorize agents of the ABC Board to examine and inspect equipment, stocks, invoices, receipts, books, papers and related records and to make copies of the same at any time during normal operating hours of the ABC Board or of the licensee.
- (3) The premises of any club licensee shall not be deemed to be the home or private premises of any member thereof. However, by applying initially or seeking renewal of such license, all officers and members of such club do agree, consent, authorize, and accept this definition of the club premises and the invitation to search, supervise, observe, and enforce the laws and regulations of the ABC Board as set forth in Section (1) above.
- (4) Where private living quarters are maintained in the same structure in which an ABC Board licensed business is operated, such living quarters shall be considered part of the licensed premises and shall be subject to warrantless full inspection and supervision by the ABC Board as in any other part of the licensed premises.
- (5) Individual hotel and motel rooms occupied by registered guests shall be considered private and not a part of the licensed premises nor subject to the provisions of this regulation.
- (6) ABC Board licensees shall be accountable to the ABC Board for criminal conduct which occurs or is suffered to occur on any part of the licensed premises. Where the ABC Board or Hearing Commission finds such criminal conduct to be allowed, caused, permitted, or suffered to occur by the licensee, employees or agents thereof, such licensee's license shall be subject to disciplinary action.
- (7) Any ABC Board licensee found on or off the licensed premises, possessing, transporting, selling, receiving, giving, or otherwise dealing with alcoholic beverages without having paid the appropriate Alabama tax thereon, shall be subject to disciplinary action.



**ALABCRegs**

**20-X-6-.01 (Continued)**

(8) Any ABC Board licensee or officer thereof violating any criminal law or statute of the State of Alabama, whether or not occurring on the licensed premises, may subject the licensee to disciplinary action.

(9) The premises of all ABC Board retail licensees shall not contain facilities for the sale of alcoholic beverages by means of a "drive-up," "walk-up," or "drive-thru" window or other type of exterior access. Provided, however, off-premises beer and/or off-premises table wine licensees may sell beer and/or table wine through a "walk-up" window if all other goods of said licensee are at these times sold through said window and the premises are otherwise closed to the public. All sales of alcoholic beverages must be made on the inside of the licensed premises except as provided herein and as provided in ABC Board Regulation 20-X-6-.07.

(10) All ABC Board licensees shall display their current ABC licenses in public view on the licensed premises.

(11) ABC Board licensees shall not rent, furnish, or maintain beverage locker service or storage service for the keeping of alcoholic beverages by customers, patrons, or consumers.

(12) No ABC Board licensee shall allow on the licensed premises the consumption and/or possession of any type of alcoholic beverage which the licensee is not authorized to sell. Further, the practice of brown bagging or customers bringing on the licensed premises their own alcoholic beverages is prohibited on ABC Board licensed premises.

(13) Any ABC Board licensee which requires its members or patrons to possess keys, card keys, code numbers, membership cards or other such mechanisms as a condition to gaining access to its licensed premises, shall provide and supply to the ABC Board upon initial issuance of the license and/or renewal, as the case may be, access to and evidence of such mechanisms so as to allow entry by ABC Board personnel upon the licensed premises at any time during normal business hours for the purpose of observing the normal operation thereof. Any changes or modifications to said premise entry mechanisms during the license year shall be brought to the attention of the ABC Board immediately. Failure to provide said above information shall, at the ABC Board's discretion, be grounds for disciplinary action against the licensee.

(14) All sales and service of alcoholic beverages by any ABC Board retail licensee shall be made within the interior of buildings situated upon the licensed premises, except as provided in ABC Board Regulation 20-X-6-.07.

Statutory Authority: Sections 28-3-2; 28-3-19; 28-3-49; 28-3A-23; 28-3A-25, Code of Alabama (1975)